

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

FIBER TECHNOLOGIES NETWORKS, L.L.C.
140 Allens Creek Road
Rochester, NY 14618

Complainant,

v.

TOWN OF SHREWSBURY ELECTRIC
LIGHT PLANT
100 Maple Avenue
Shrewsbury, MA 01545-5398

Respondents.

D.T.E. 01-70

**REPLY OF FIBER TECHNOLOGIES NETWORKS, L.L.C. TO
SHREWSBURY'S ELECTRIC LIGHT PLANT RESPONSE TO APPEAL FROM
HEARING OFFICER'S RULING ON FIBER TECHNOLOGIES NETWORKS, L.L.C.'S
MOTION TO COMPEL DISCOVERY**

Fiber Technologies Networks, L.L.C. ("Fibertech") submits this brief reply to points raised in the response filed by Shrewsbury's Electric Light Plant ("SELP") to appeal dated February 21, 2002 from Hearing Officer's ruling on Fibertech's motion to compel discovery responses by SELP. Fibertech argues that SELP waived the attorney-client privilege "by admitting that it submitted the opinion to its very own governing Commission." Fibertech makes no such argument. Fibertech's argument is that SELP waived the privilege by disclosing to Fibertech in discovery documents and to officials of the Town of Shrewsbury what it told its governing Commission about the opinion. It is this additional disclosure of a privileged matter to third parties not within the privilege that constitutes a waiver. Contrary to the Superior Court

authority relied on by SELP and the Hearing Officer, the Supreme Judicial Court has stated that “the privilege was contrary to the interest in full disclosure and, therefore, should be narrowly construed.” *See Commonwealth v. O’Brien*, 377 Mass. 772, 775 (1979).

Respectfully submitted,

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